

Appl. No. 10/005,522
Request for Reconsideration dated August 12, 2004
Reply to Office Action of May 25, 2004

REMARKS

Records of Interviews

Telephone interviews were held between the undersigned attorney, Raymond W. Green, and Examiner Jacqueline F. Stevens on or about May 5, 2004; June 14 and 16, 2004; and July 16, 2004.

First Telephone Interview

On May 4, 2004, I filed an Information Disclosure Statement in this Application. On or about May 5, 2004, I called Examiner Stevens and advised her that an IDS had been filed, making of record a reference which had recently come to my attention. Examiner Stevens advised that an Office Action had been written and not yet mailed, but that it was beyond recall for the purpose of considering the reference.

In due course the Office Action mailed May 25, 2004, was received and reviewed.

Second Telephone Interview

On June 14, 2004, I called Examiner Stevens and advised her that the citation of Lavash USP 6,328,722 in the Office Action mailed May 25, 2004, appeared to be in error, because Applicants had filed declarations under Rule 131 showing an invention date prior to November 10, 1990, and neither the actual filing date nor any of the filing dates recited for earlier applications related to Lavash '722 appeared to be earlier than November 10, 1990, so Lavash '722 did not appear to be available as a reference. Examiner Stevens advised that the Office Action was in error, and that it was intended to cite Lavash USP 5,354,400, which had the same drawings as Lavash '722.

Third Telephone Interview

On June 16, 2004, I called Examiner Stevens and advised her that Lavash '400 appeared

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to be irrelevant to the present application, because:

(1) Lavash '400 was filed April 5, 1993, after the date established for a date of invention by the Rule 131 declarations filed in this application.

(2) Of all of the related U.S. applications of which Lavash '400 claims benefit, only one, Serial No. 07/431,009, was filed on a date (November 1, 1989) that was prior to the date of invention established by the Rule 131 declarations filed in this application.

(3) Lavash '400 is a continuation of Serial No. 07/769,607, filed October 1, 1991, which is a continuation-*in-part* of four different earlier applications. Thus Lavash '400 contains both new matter first filed after November 10, 1990, and matter disclosed in Serial No. 07/431,009, filed November 1, 1989.

(4) Serial No. 07/431,009 appears (according to Lavash '400) to have been abandoned in favor of continuation Serial No. 07/707,233, filed May 21, 1991. The PAIR system reveals that Serial No. 07/707,233 issued as Osborn III U.S. Patent 5,346,486, on September 13, 1994. Inspection of Osborn '486 shows that it is *not* identical to either of the Lavash patents, and has different drawings.

(5) The disclosure in Serial Nos. 07/431,009 and 07/707,233, now Osborn '486, appears to be *prima facie* available as a reference against the present application, regardless of whether Lavash claimed benefit of that disclosure or not. The disclosure of Lavash '400 that is *not* also contained in Serial Nos. 07/431,009 and 07/707,233, now Osborn '486, does *not* appear to be available as a reference against the present application. So Lavash '400 adds nothing that is relevant to the examination of the present Application, to the disclosure of Osborn '486. If Osborn '486 is relevant to the present application, the rejection should be based on Osborn '486, not on Lavash '400.

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(6) MPEP § 710.06 explains that in the event of an error in citing a reference in an Office Action, if the error is brought to the attention of the Office within a month of the mail date of the Action, the Office will restart the period for response, if requested by Applicant. (Such a request was made during the telephone interview of June 16, 2004, and it was formalized in a RECORD OF INTERVIEWS AND REQUEST FOR CORRECTION OF OFFICE ACTION on June 16.) In the redated Office Action, reference should be made to Osborn '486, if the Examiner deems it to be relevant; but not to either Lavash '722, which does not appear to be available as a reference against the present Application at all, or to Lavash '400, which does not appear to be available as a reference against the present Application except to the extent that it repeats what is disclosed in Osborn '486.

In response to all of this information, the Examiner requested that a paper be filed, stating the foregoing information regarding the second and third telephone interviews. Accordingly, a RECORD OF INTERVIEWS AND REQUEST FOR CORRECTION OF OFFICE ACTION was filed by facsimile on June 16, 2004.

Fourth Telephone Interview

On July 16, 2004, another call was placed to Examiner Stephens. I explained that I had filed a RECORD OF INTERVIEWS AND REQUEST FOR CORRECTION OF OFFICE ACTION on June 16 (and an IDS May 4), neither of which had yet shown up on PAIR. Examiner Stephens explained that an incoming paper had been received about June 16, but that it had not yet been sent to her. She said she would call and ask that the June 16 paper be sent to her.

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Remedial Actions

Because papers filed by mail more than 3 months ago and by facsimile almost 2 months ago have not made their way to the file for this Application, and because the August 25, 2004, term for response to the Office Action of May 25, 2004, is approaching without a correction of the Office Action as requested, the following remedial actions are taken.

Neither the May 4, 2004, Information Disclosure Statement, nor the June 16, 2004, RECORD OF INTERVIEWS AND REQUEST FOR CORRECTION OF OFFICE ACTION appears, according to the USPTO PAIR system, to have reached the file for this Application. Accordingly, (1) the Examiner is alerted to the existence of the May 4, 2004, Information Disclosure Statement, and advised that another copy will be provided on request; and (2) the substance of the previously reported interviews is repeated, above, in this REQUEST FOR RECONSIDERATION.

Because the Office Action of May 25, 2004, has not been corrected, as per the policy of MPEP § 710.06, in spite of Applicants' timely requests, both orally and in writing, a response to the Office Action of May 25, 2004, as written, appears below.

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Response to Office Action of May 25, 2004

Reconsideration is requested.

Claims 35-46 are pending. No Amendments to the Specification, Claims or Drawings are made at this time.

It is noted with appreciation that the previous rejection of Claims 35-46 under 35 USC 103(a) as unpatentable (obvious) over Menard USP 6,231,554 in view of Mattingly USP 4,608,047 has been explicitly withdrawn. The Examiner states that the arguments filed (*i.e.*, that Applicants' invention date is before November 10, 1990) are persuasive.

In response to comments in Paragraph 3 of the Office Action, the Examiner is advised that at the time the present invention was made, all of the inventors were under an obligation to assign their invention to the present assignee of the Application.

Claims 35-46 are rejected under 35 USC 103(a) as unpatentable (obvious) over Lavash USP 6,328,722 in view of Mattingly USP 4,608,047.

Applicants have filed declarations under Rule 131 showing an invention date prior to November 10, 1990. Neither the actual filing date nor any of the filing dates recited for earlier applications related to Lavash '722 is earlier than November 10, 1990. Lavash '722 is therefore not available as a reference against the present Application. Accordingly, the rejection should be withdrawn.

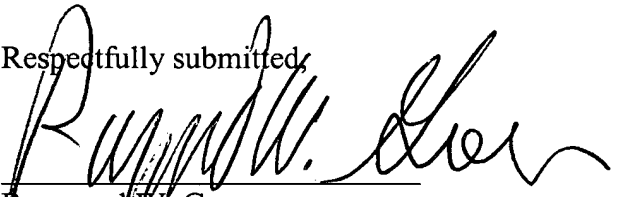
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Conclusion

Reconsideration, withdrawal of the rejection, and allowance of all claims now presented, are respectfully requested. The previous rejection (Menard '554 in view of Mattingly '047) has been explicitly withdrawn. The only present rejection (Lavash '722 in view of Mattingly '047) should be withdrawn, because Applicants' invention date, as established by Declarations under Rule 131, is before November 10, 1990, before the actual filing date and before all of the filing dates recited for earlier applications related to Lavash '722.

Accordingly, the Application appears to be in condition for allowance, both as to form and over the prior art. Such action is courteously requested.

Respectfully submitted,



Raymond W. Green
Registration No. 24,587

BRINKS HOFER GILSON & LIONE
P. O. Box 10395
Chicago, Illinois 60610
312-321-4222
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